to its stockholders. It follows that in the great majority of cases it cannot be shown to be insolvent by considering simply the claims of outside creditors. Accordingly, the claims of members may be shown to prove the propriety of remedies as for insolvency. See *Globe Building & Loan Co.* v. *Wood*, 22 Ky. L. Rep. 1500, 1502, 60 S. W. 858, 860. ENDLICH, BUILDING ASSOCIATIONS, 2 ed., § 511. In like manner, if these associations are to be put through bankruptcy, the claims of the members must be permitted to be shown. But only debts provable in bankruptcy are included in the debts which make a person insolvent and allow a petition in bankruptcy against him. U. S. COMP. STAT., §§ 9585 (11) (12), 9587. So if these associations are to go through bankruptcy at all, their shareholders must be holders of provable claims and so allowed to vote for the trustee.

CARRIERS — PASSENGERS — WHO ARE PASSENGERS — CHILD RIDING FREE AT INVITATION OF MOTORMAN. — The plaintiff, a boy ten years of age, in response to the beckoning of a motorman, boarded the defendant's street car without payment of fare. Owing to the negligence of the motorman in suddenly stopping the car, the plaintiff was thrown off and injured. He now sues the carrier on the theory of breach of duty toward a passenger. *Held*, that the plaintiff may recover. *Hayes* v. *Sampsell*, 113 N. E. 611 (Ill.).

It has long been held that the relation of carrier and passenger can arise otherwise than in contract. *Marshall* v. *The York, etc. Ry.*, 11 C. B. 655; *Austin* v. *Great Western Ry.*, L. R. 2 Q. B. 442. However, the relation is perfected only by an acceptance of the person as a passenger by the carrier. Where the duty of accepting is delegated to an agent, it obviously includes acceptance only on payment of fare. Therefore, it is without the scope of the agent's authority to raise the relation when such payment is not intended. See J. H. Beale, "Carriers and Passengers," 19 HARV. L. REV. 250, 265. Thus adults are generally classed as trespassers when riding with the conductor's permission without payment of fare. *Purple* v. *Union Pacific Ry.*, 114 Fed. 123; *Robertson* v. *New York & Erie R. Co.*, 22 Barb. (N. Y.) 91. *Contra*, *Chattanooga Rapid Transit Co.* v. *Venable*, 105 Tenn. 460, 58 S. W. 861. It must be equally apparent that it is without the scope of the agent's authority to raise the relation with respect to children under similar conditions, since the scope of the authority cannot vary in inverse ratio with the age of the person applying. See *Chicago, etc. Ry.* v. *Casey*, 9 Bradw. (Ill.) 632, 643. However, a number of courts have made an exception to the rule and allowed recovery for a child injured as in the principal case. *Cf. Wilton* v. *Middlesex Ry. Co.*, 107 Mass. 108, with *Robertson* v. *Boston, etc. Ry. Co.*, 190 Mass. 108, 76 N. E. 513. *Cf. Muelhausen* v. *St. Louis Ry. Co.*, 91 Mo. 332, 2 S. W. 315, and *Whitehead* v. *St. Louis, etc. Ry. Co.*, 99 Mo. 263, 11 S. W. 751, with *Snider* v. *St. Joseph Ry. Co.*, 60 Mo. 413. While it seems difficult to say that the true carrier-passenger relation arises in these cases, the courts apparently have in mind an affirmative duty either to exclude children or else admit them as passengers. See *New Jersey Traction Co.* v. *Danbech*, 57 N. J. L. 463, 31 Atl. 1038; *Pittsburg, etc. Ry.* v. *Caldwell*, 74 Pa. St. 421.

CONTRACTS — CONTRACT OF INDEMNITY — WHETHER ASSIGNABLE. — A married woman owned stock in the plaintiff company, and was under heavy liability for calls thereon. In consideration of her executing a transfer of this stock to an infant, the defendant agreed to indemnify her against any liability for calls. The company went into liquidation, and the present holder of the stock being an infant, the woman was placed on the list of contributories. Judgment was recovered against her for calls, but as she had no separate estate, the judgment was fruitless. The liquidator then took an assignment from her of the contract of indemnity and sued defendant to recover the amount of the

calls. *Held*, that the plaintiff may recover. *British Union & National Ins. Co.* v. *Ranson*, 60 Sol. J. 679.

At law, recovery on a contract of indemnity, before payment on the liability, is dependent on the construction of the contract. If broad enough to be an indemnity for liability, and not merely an indemnity for payment upon liability, recovery will naturally follow. *Gage* v. *Lewis*, 68 Ill. 604; *Churchill* v. *Hunt*, 3 Denio (N. Y.) 321; *In re Negus*, 7 Wendell (N. Y.) 499; *Showers* v. *Wadsworth*, 81 Cal. 270, 22 Pac. 663. See *Smith* v. *Ry. Co.*, 18 Wis. 17, 24. But equity, proceeding on equitable principles, will disregard the language of the contract even if it expressly limits the indemnity to payment on the liability. *Lacey* v. *Hill*, L. R. 18 Eq. 182; *In re Law Guarantee, etc. Society*, [1914] 2 Ch. 617; *Central Trust Co. of N. Y.* v. *Louisville Trust Co.*, 87 Fed. 23. See *Johnston* v. *McKiver*, 19 Q. B. D. 458, 460. As to the point raised in the case upon the assignability of a contract of indemnity, there should be no difficulty. There is of course nothing personal in the right to receive money. The few cases in point so hold without argument. *In re Perkins*, [1898] 2 Ch. 182; *Jenckes* v. *Rice*, 119 Iowa 451, 93 N. W. 384; *Marshall* v. *Cobleigh*, 18 N. H. 485. The fact that the assignee is the party against whose claim the indemnity was given cannot decrease his rights. Indeed that fact might have been taken to give him a right independent of assignment to proceed against the claim to the indemnity, which is an asset of his debtor, ahead of other creditors. *Cf. In re Richardson*, [1911] 2 K. B. 705.

CONTRACTS — RESTRICTION ON ASSIGNMENT — EFFECT OF WAIVER. — A contract between the city and a contractor provided that neither the contract nor the right to moneys due thereunder should be assignable. The contractor assigned the claims for money to the bank for security. The city assented thereto and paid the money into court. A subcontractor claims that the assignment is invalid and, hence, that he can attach the claim as an asset of the assignor. *Held*, that the assignment operated to give the bank a complete right to the money due. *Portuguese-American Bank of San Francisco* v. *Welles*, U. S. Sup. Ct., Oct. Term, 1916, No. 45.

The court lays down the principle that restraining the alienation of a debt is no more to be tolerated than restraining the alienation of a chattel, and for this reason the assignment in this case operated to perfect the right of the bank to the moneys in question. It is well established that provisions against assignment are for the benefit of the contracting parties and if they waive their rights and do assign and themselves permit assignments, third parties cannot interfere. *Wilson* v. *Reuter*, 29 Ia. 176; *Burnett* v. *Jersey City*, 31 N. J. Eq. 341. *Cf. Staples* v. *Somerville*, 176 Mass. 237, 241, 57 N. E. 380, 381. On the other hand, if such provision is not waived, the assignee has no claims enforcible against the obligor. *Griggs* v. *Landis*, 19 N. J. Eq. 350; *Andrew* v. *Meyerdirck*, 87 Md. 511, 40 Atl. 173; *Lockerby* v. *Amon*, 64 Wash. 24, 116 Pac. 463. But see *Spare* v. *Home Mutual Ins. Co.*, 17 Fed. 568. If the analogy sought to be drawn by the court between a chattel and a debt were carried to its logical conclusion it would follow that the provision against assignment has no effect and that a waiver thereof is immaterial. It is submitted that such an analogy cannot be drawn, since the legal conception of a *chose* in action is utterly different from that of a chattel. *Board of Trustees* v. *Whalen*, 17 Mont. 1, 41 Pac. 849; *Griggs* v. *Landis*, *supra*, 353. For an exhaustive inquiry into the nature of a *chose* in action as regards assignability, see W. W. Cook, in 29 HARV. L. REV. 816, and Samuel Williston, in 30 HARV. L. REV. 97.

CRIMINAL LAW — FORMER JEOPARDY — IDENTITY OF OFFENSES — INFERIOR COURT'S LACK OF JURISDICTION OF GREATER OFFENSE. — The defendant, convicted in a mayor's court on a charge of assault and battery, was sentenced to